

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 85 of 1984

AND

CIVIL APPLICATION NO. 765 of 1984

WITH

LETTERS PATENT APPEAL NO. 86 of 1984

AND

CIVIL APPLICATION NO. 766 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SAVITABEN RAMANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JAYESH M PATEL for Appellant

MR BY MANKAD for Respondent No. 1

RESPONDENTS 2 AND 3 served.

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 05/11/98

COMMON ORAL JUDGEMENT (Per Patel, J.)

Mr. Patel, learned advocate appearing for the appellants requests for time. It is required to be noted that the LPAs are of 1984; The proceedings are pending since long. Therefore, the LPAs are required to be disposed of without any delay. Mr. Patel submitted that as the the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the Act) is likely to be repealed and therefore also the matter should be adjourned. Till today, the Act is in force and, therefore, all the authorities are expected to act in accordance with the provisions of the law which is in operation as on today.

2. LPA No. 85/1984 is preferred by sole appellant being aggrieved by the decision of learned Single Judge in Special Civil Application No. 120 of 1984 whereby the petition came to be rejected on the grounds that notification issued under section 10 (3) of the Act was not challenged, and that thereafter notice under section 10 (5) of the Act was issued for handing over the possession which was challenged in appeal. It was pointed out that an application under section 21 of the Act was pending before the appropriate authority.

2.1 L.P.A. No. 86/1984 is also disposed of exactly on the similar grounds.

3. From the orders it clearly transpires that the formality was completed and possession was to be taken for which notice under section 10 (5) of the Act was issued.

4. Mr. Patel, learned advocate appearing for the appellants in both the matters submitted that though applications were pending before the competent authority under section 21 of the Act, the authority, instead of deciding the applications, kept the same pending and notification under section 10 (5) of the Act came to be issued.

5. Section 21 of the Act reads as under :-

(1). Notwithstanding anything contained in any of the foregoing provisions of this Chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction

of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square meters) for the accommodation of the weaker sections of the society, in accordance with any scheme approved by such authority as the State Government may, by notification in the official Gazette, specify in this behalf, then, the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land for the purpose of this Chapter and permit such person to continue to hold such land for the aforesaid purpose, subject to such terms and conditions as may be prescribed, including a condition as to the time limit within which such buildings are to be constructed.

(2). xxx xxx xxx xxx xxx

6. We find reference in both the appeals that applications under section 21 are still pending. So far as LPA No. 85/84 is concerned, Form VI was required to be submitted in accordance with Rule 5 of the Urban Land (Ceiling & Regulations) Rules, 1976, [hereinafter referred to as the Rules]. After filing the form, application has been submitted to the appropriate authority under section 21 of the Act. It appears that as prescribed in Form No. V, under Rule 11, a declaration under section 21 (1) of the Act along with the application was filed. The same is produced on record, vide Exh. 'G' at page 35. It appears that on 3.8.1979, appellant was called upon to give further details as the form which was submitted was not filled in with all particulars. It appears that on 31.8.1979, vide Annexure "I", further details as called for by the competent authority were forwarded.

7. So far as LPA No. 86/84 is concerned, vide Annexure 'A', details were forwarded indicating that an application under section 21 of the Act is filed before the competent authority. Vide Annexure 'G', copy of the form with details is also placed on record.

8. It is submitted by Mr. Patel, learned advocate appearing for the appellants in both the matters that applications were pending at the relevant time under section 21 of the Act, and in view of that, it was not open for the competent authority to render the decision on the basis of the form and declare the land surplus, and to initiate further proceedings. Mr. Patel submitted that after filing a statement under section 6 of the Act, if the application for exemption is pending

either under section 20 or under section 21 of the Act, it is the duty of the Government to first deal with such applications, and then to proceed under section 8 (1) and 8 (3) of the Act. For this purpose, he has placed reliance on a decision of a Division Bench of this Court in the case of NIRMALABEN vs. STATE OF GUJARAT reported in 1984 (1) GLR 322. The decision of the Full Bench in the case of AVANTI ORGANISATION VS. COMPETENT AUTHORITY reported in 1989 (1) GLR 586 was considered by a Division Bench of this Court in the case of SAMRATHBEN CHOKSHI VS. STATE OF GUJARAT in LPA No. 485 of 1984 in Special Civil Application No. 1735 of 1984 decided on 8.6.1983. In the said judgment, in paragraph 6 and 7, the Division Bench held as under :-

"6. Once we accept the position that for the purpose of the present question there need not be a distinction between applications for reliefs under Sections 20 and 21 of the Act, the allowing of them leading to the same result, there is no difficulty in applying the ratio of the Full Bench to the facts of the present case. The learned Single Judge, in our view, need not have made a distinction between an application under Section 20 and an application under Section 21 of the Act for the purpose of considering the question as to whether during their pendency there could be prosecution of the other process under the Act. As per our discussion supra, the result in both applications, if that should be the case, in favour of the applicants, would be to the same effect, namely the land in question will not come within the purview of Chapter III of the Act and on the other land, it will go out of the purview of Chapter III of the Act.

7. Thus, we find that we have to apply the ratio of the Full Bench to the facts of the present case and hold that the processes under the Act prosecuted beyond the stage of Section 10 (2) of the Act cannot survive and as to the future need to prosecute further processes after the stage of section 10 (2) of the Act, it will depend upon the decision in the application under Section 21 of the Act. Accordingly, we allow this Letters Patent Appeal, set aside the order of the learned Single Judge dated 18th September 1984 in Special Civil Application No. 1735 of 1984 and we make the following order in that Special Civil Application :-

- (i). The proceedings under the Act in respect of the lands in question prosecuted upto the stage of Section 10 (2) of the Act are for the present left untouched;
- (ii). The proceedings prosecuted after the stage of Section 10 (2) of the Act do not survive; and,
- (iii). The prosecution of further processes under the Act after the stage of Section 10 (2) of the Act will depend upon the decision on the application under Section 21 of the Act."

9. In the instant case, Mr. Mankad, learned Assistant Government Pleader appearing for the State could not deny the fact that applications under section 21 of the Act are pending.

9.1 In LPA No. 84/84, an application under section 20 of the Act is also, pending.

10. The State is bound to follow the decision of this Court. Under the circumstances, the proceedings initiated in the present two cases in respect of the lands upto the stage of section 10 (2) of the Act are for the present left untouched. The prosecution of further processes under the Act after the stage of Section 10 (2) of the Act will depend upon the decision on the applications under Sections 20 and/or Section 21 of the Act.

11. Mr. Patel has raised other contentions also. But as we are allowing the appeal on the aforesaid ground, we are not dealing with the other submissions made by Mr. Patel.

12. The appeals are allowed to the extent that the proceedings initiated after completion of the procedure under section 10 (2) of the Act are hereby quashed and further proceedings will depend upon the outcome of the applications under Sections 20 and/or Section 21 of the Act. No orders as to costs.

13. In view of the aforesaid orders passed in the LPAs, no further orders are required to be passed in the Civil Applications, and both the Civil Applications stand disposed of accordingly.

csm./ -----

